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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,932	12/16/2003	James H. Boschma JR.	11196.20.1	5832
7590	05/04/2004		EXAMINER	
Neil K. Nydegger NYDEGGER & ASSOCIATES 348 Olive Street San Diego, CA 92103			COLLINS, TIMOTHY D	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/736,932	BOSCHMA, JAMES H. <i>KB</i>
Examiner	Art Unit	
Timothy D Collins	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3,5,6,7, and 10 of U.S. Patent No. 6,715,712. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to have made the device of 712 without the bowl shaped members and used another friction means of a different shape, since it has been held that merely changing the geometric shape of objects is within the grasp of one of ordinary skill in the art.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 9, 10, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 3,412,963 to Struble (hereinafter called 963).
- a. Re claims 1 and 9, 963 discloses a container (pack as seen in column 2, lines 33 and 34, an aerostat with first and second portions as seen at least in figure 11 at numbers 90 and 90a. 963 also discloses a means for inflating and drawing the first portion out (Freon or other gasses as at least seen in column 5 at lines 25-57. 963 also discloses a means for controlling the exit rate of the first portion, as seen in figure 11 at number 92. Note: the recitation "to maintain a pressure" is functional and it is noted that some pressure is maintained in the aerostat of 963, also "a predetermined pressure range" is essentially any pressure, because it will inflate within some range. Also 963 discloses that the rate of exit of the aerostat is controlled by the inherent friction of the aerostat material against the container and clamping device.
- b. Re claims 2 and 16, 963 discloses a controlling means (92) that is a friction sheet, as seen in 963 because a "friction sheet" is any friction causing material that is in a sheet form and a sheet form is any material that has width, such as the number 92 in the figure 11. This device holds the aerostat and provides some friction inherently as the aerostat inflates with the gas. Also as seen at least in figure 11, the sheet has an aperture. Note that an aperture is defined as a hole and the hole of figure 11 is where the aerostat comes out. Also

note, it is suggested that the applicant further define the aperture and provide some detail of this area of the device.

- c. Re claim 15, see rejections of claims 1,9, and 2 above.
- d. Re claim 3,10 and 17, 963 discloses that the container is cylindrical in shape and that the aperture has a circular opening at least as seen in figure 11.

5. Claims 1,2,3,9,10 and 15-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by FR 2612485 A1 (herein after called 485).

- e. Re claims 1,2,3,9,10 and 15-18, 485 discloses a friction sheet as seen at least in figure 1 on the left side of the bottom of the cylindrical winding boom (12), the friction sheet is the “belt-like” object attached to the motor.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4,5,11,12,13,14,18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over 963 as applied to claims 1,2,12,15,17, and 18 above.

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f. Re claims 4,5,11,12,18 and 19, 963 discloses that the container is cylindrical as seen at least in figure 11. However 963 may not specifically disclose that the controlling means is rubber or an elastomeric substance, however it is old and well known in the art that clamps and other holding devices can be made of rubber or other elastomeric materials, and therefore it would have been obvious to one of ordinary skill in the art to have made the clamp of 963 out of an elastomeric material so as to hold the aerostat of 963 more securely and so as to use a soft material that would not puncture the aerostat while it is in the container.

g. Re claim 13, see rejections of claims 12 and 3 above.

h. Re claim 14, see rejection of claims 13 and 4 above.

8. Claims 4-5, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over 485 as applied to claims 1,2,9,10 and 15-18 above.

i. Re claims 4-5 and 19, 485 may not specifically state that the container is cylindrical, however it is old and well known in the art that gondolas may be cylindrical, therefore it would have been obvious to one of ordinary skill in the art to have made the gondola cylindrical. The purpose of making the gondola cylindrical would be to make it more aerodynamic and create less drag under the aerostat while in flight. 485 may also not specifically state that the friction sheet is rubber or an elastomeric material, however it is old and well known in the art that belts are commonly made of rubber or elastomeric material (see pulley drive belts in cars) therefore it would have been obvious to one of ordinary skill in the

art to have used rubber or elastomeric materials to be sure the friction material does not slip as taught by car pulleys.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose balloons and inflation.

j. NOTE: USPN 5,388,786 can be applied to the same claims as the art above, in very similar fashion to the 963 reference. This reference teaches of similar apparatus to 963.

k. USPN 6317080

l. USPN 3387805

m. USPN 5816537

n. USPN 1370043

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-4:30.

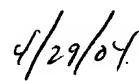
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Timothy D. Collins
Patent Examiner
Art Unit 3643


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600


4/29/04